Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier	)	
Compensation Regime	)	CC Docket No. 01-92
	)	

To: The Commission

REPLY COMMENTS OF UNITED STATES CELLULAR CORPORATION

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United States Cellular Corporation ("USCC"), by its attorneys, hereby submits this reply to comments filed in response to the Commission's Further Notice of Proposed Rulemaking ("FNPRM") in the above-captioned docket. 1/

INTRODUCTION AND SUMMARY

As noted in its comments filed on May 23, 2005, 2/ USCC strongly supports the Commission's efforts to re-shape existing intercarrier compensation through comprehensive reform. USCC urged the Commission to speed the transition away from legacy intercarrier compensation mechanisms based on complicated formulas and obsolete assumptions. Along with numerous other parties that filed comments in response to the FNPRM, USCC believes that true

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1/ Developing a Unified Intercarrier Compensation Regime, *Further Notice of Proposed Rulemaking*, 20 FCC Rcd 4685 (2005) ("FNPRM").

2/ Unless otherwise noted, all references to filed comments herein are references to comments filed on or about May 23, 2005, in response to the FNPRM.

reform must lead to a unified "bill-and-keep" system, with new rules adopting and implementing bill-and-keep as quickly as is possible and practical.

Bill-and-keep creates appropriate incentives for carriers to enter privately negotiated agreements, and encourages them to look to their own customers first for recovery of costs. A unified intercarrier compensation regime based on bill-and-keep will be more efficient, because it will eliminate non-neutral regulations that tend to favor certain technologies and that tend to distort the marketplace by conferring different treatment on similarly situated carriers. Bill-and-keep, when coupled with targeted, portable, and competitively neutral universal service funding, will preserve and enhance choices for consumers in rural areas and other high-cost communities – thereby fulfilling the Communications Act's promise of access in these communities to the same kinds of advanced telecommunications and information services that are available in urban areas.

USCC also offered brief comments on other topics raised by the FNPRM, including universal service design and CMRS-specific compensation issues. As in the case of bill-and-keep, a number of parties representing a broad range of industry and governmental interests agreed with USCC's position on these other important issues. Nevertheless, some parties – mainly incumbent carriers that currently enjoy or formerly enjoyed monopoly status in their respective service areas – insist that the Commission should retain or even exacerbate complicated and unfair elements of the outdated intercarrier compensation regimes now in place.

USCC submits these reply comments to rebut the erroneous arguments made by commenters who would have the Commission cling to arbitrary and unnecessary distinctions but cast aside sensible, proven policies. Some commenters suggest that any intercarrier compensation "reform" should preserve certain carriers' revenues, impose complex compensation methodologies, and perpetuate competitively non-neutral high-cost support regulations. In the reply comments that follow, USCC demonstrates that these suggestions run counter to the Commission's stated goals for reform: economic efficiency, preservation of universal service, competitive and technological neutrality, marketplace certainty, and administrative simplicity. 3/

I. INTERCARRIER COMPENSATION AND UNIVERSAL SERVICE FUNDING MUST BE COMPETITIVELY AND TECHNOLOGICALLY NEUTRAL – BUT NOT REVENUE NEUTRAL.

One of the few points on which the Commission and all commenters participating in this proceeding seem to agree is that the current system of intercarrier compensation reform is broken and needs to be fixed. 4/ There is no such consensus surrounding the claim advanced by some incumbent carriers that intercarrier reform should guarantee no reduction in revenues for the parties who champion this argument (although, of course, no other categories of carriers would

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3/ *See* FNPRM at ¶¶ 29 – 33.

4/ *Id*. at ¶¶ 37, 60 (describing the "urgent need to reform the existing intercarrier compensation rules" and "the need for fundamental change").

benefit from such revenue guarantees). 5/ Contrary to these arguments, however, real reform cannot and should not ensure the revenues of any given carrier or class of carriers.

The underlying purpose of this intercarrier compensation reform proceeding, and indeed of the entire Telecommunications Act of 1996, is to foster technological advancement and increased competition in the industry. In a dynamic era in which narrowband and circuit-switched technologies are being replaced by broadband and IP-enabled technologies, and in which customers are relying less on stationary and wireline applications and replacing them with mobile and wireless technologies, it would be unthinkable for government to attempt to guarantee the revenues of incumbent providers using existing technologies. Such an attempt could frustrate the development of emerging technologies by newly entering companies. Moreover, competition by its very nature is likely to move revenue streams from one provider to another, redistributing revenue between incumbents and new entrants as customers move back and forth between competing service providers. It is axiomatic that customers benefit from choice, because carriers competing for business on a level playing field will generally reduce prices and improve service offerings. Thus, commenters who argue that reform undertaken by the Commission should be revenue neutral are ignoring the demonstrated benefits

5/ *See, e.g.*, Comments of CenturyTel, Inc. at 17 – 18; Comments of John Starulakis, Inc. at 4; Comments of TDS Telecommunications Corporation at 25 – 26 (asserting that "reductions in intercarrier compensation revenues must also be accompanied by revenue replacement mechanisms for all carriers, including CLECs"); Comments of the United States Telecom Association at 17.

of competition. They ask the Commission to focus on certain carriers' vested interests rather than the public interest.

As stated in our earlier comments in this proceeding, USCC agrees entirely with the Commission's conclusions that intercarrier compensation must promote economic efficiency by encouraging efficient use of, investment in, and competition between telecommunications networks. The Commission noted in the FNPRM that one of its "most important policies is to promote facilities-based competition in the marketplace." 6/ USCC again underscores the fact that to promote real competition, the Commission must fashion rules that will be competitively and technologically neutral and that will "accommodate continuing change in the marketplace and [ ] not distort the opportunity for carriers using different and novel technologies to compete for customers." 7/ Moving to ensure revenue neutrality for any carrier or class of carriers would fly in the face of that competitive mandate.

Likewise misguided is the argument that "[a] unified, cost-based intercarrier compensation system is vastly superior to a 'bill and keep' system with respect to the predominant goal of telecommunications regulation, the encouragement of private investment in telecommunications infrastructure." 8/ That belief rests on the faulty assumption that private investment in wireline

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6/ FNPRM at ¶ 31 (citations omitted).

7/ *Id*. at ¶ 33.

8/ Comments of Interstate Telecom Consulting, Inc. at 27.

infrastructure is more valuable, or in some sense more true to the Act's purpose, than investment in other technologies. If spurring private investment in telecommunications infrastructure is indeed the "predominant goal" of regulation, then the Commission must promote competition with rules that spur investment in both wireline *and* wireless infrastructure in high-cost areas. Government should not pick technological or competitive winners and losers, and no carrier has an entitlement to a certain amount of revenue based on historical costs or historical revenue expectations. The continued use of embedded rather than forward-looking costs as the basis for compensation or support would not satisfy the Commission's goal of competitive and technological neutrality, and would perpetuate marketplace distortion and uneconomic investment in infrastructure.

USCC, with our largely rural service area, understands well the challenges that come along with serving rural populations. Regulations that subject similar types of traffic to similar rules are in large part the solution to these challenges, if the Commission's aim is to guarantee service in these areas as opposed to guaranteeing a particular type of service or guaranteeing revenue for the carriers that have historically provided that chosen service. Competitive and technological neutrality are vital in the intercarrier compensation and universal service contexts, but revenue neutrality for ILECs is a surefire path to an uneven playing field that favors historical incumbents and entrenched interests.

Rural consumers deserve service and service choices at reasonable rates, but that does not mean that intercarrier compensation or universal service funding should guarantee carrier revenues with implicit or explicit subsidies for inefficient technologies. Universal service funding must be channeled into targeted, explicit subsidies for least-cost technology. 9/ It must be fully portable, focused on consumers, and (like intercarrier compensation) competitively neutral.

The Commission can satisfy its mandate to preserve universal service with a fund that bases compensation on the forward-looking costs of the most efficient technology, and that derives contributions from a fair, revenue-based assessment on a broad range of contributing entities. Some parties filing comments in response to the FNPRM seemingly desire a Universal Service Fund that doubles as business plan insurance or, worse yet, that virtually eliminates the potential for competition in high-cost areas. 10/ Universal service was never meant to serve as an insurance policy for particular types of telecommunications service providers – much less a corporate welfare plan. Universal service funding should ensure that customers in high-cost areas have access to communications choices – not ensure that LECs have access to a certain level of profit.

9/ Montana Independent Communications Systems asserts that "the notion that least cost technology should be encouraged ignores quality of service and functionality." Comments of Montana Independent Communications Systems, *et al.* at 21. This is another assumption that is demonstrably false at present in most areas, and that will become even less tenable when universal service funding is fully portable and wireless carriers are given an equal chance at competing in a marketplace undistorted by non-neutral subsidies.

10/ *See, e.g.*, Comments of Beehive Telephone Company, Inc. at 3 (arguing against the designation of competitive eligible telecommunications carriers and "duplication of services" in subsidized rural areas); Comments of Comporium Communications at 12 (arguing for the creation of an explicitly non-portable cost recovery funding mechanism).

USCC agrees wholeheartedly with the conclusion of the New Jersey Division of the Ratepayer Advocate that the Commission should "[r]eject any industry proposals that are based on a purported entitlement to an arbitrary revenue stream." 11/ The Commission's intercarrier compensation reform and the fulfillment of universal service obligations should be consumer-focused, not carrier-focused. USCC continues to believe that the Commission must place customers' interests first, with ensuring consumer choice and affordable service trumping carriers' claims to a predetermined revenue stream.

II. BILL-AND-KEEP PROMISES ADMINISTRATIVE SIMPLICITY AND ECONOMIC EFFICIENCY, ENSURING STABILITY AFTER REFORM.

In addition to placing its primary focus on customers' needs, the Commission should also focus on creating a stable marketplace for consumers and investors in this proceeding, thereby promoting innovative inter-modal and intra-modal competition. To benefit the entire industry rather than one class of participants, intercarrier compensation reform must provide for administrative simplicity and some degree of investor certainty.

The FNPRM expressed the Commission's strong preference for limited regulatory intervention and for rules under which any remaining distinctions between types of carriers and types of traffic are "based on legitimate economic or

11/ Comments on Behalf of the New Jersey Division of the Ratepayer Advocate at 13; *see also* Comments of the New York State Department of Public Service at 6 ("It is especially important that federal universal service funding not be used as a mechanism to shield significant portions of the ILECs' revenues from competitive erosion."); Comments of CompTel/ALTS at 7; Comments of Nextel Communications, Inc. at 19.

technical differences, not artificial regulatory distinctions." 12/ As the Commission must also recognize, artificial regulatory distinctions and legacy regulations untethered to current marketplace realities can only lessen efficiency and distort investment decisions. Bill-and-keep's simple rules and paradigms decrease the complexity of the intercarrier compensation process, requiring minimal regulatory intervention, administrative expense, and supervision by the Commission and state regulators. Bill-and-keep also encourages efficiency and fosters competition by promoting carrier self-reliance for recovery of costs, and reduces the possibility of regulatory arbitrage and resulting inefficient investment.

Bill-and-keep is the only approach that meaningfully reduces the scope and complexity of the regulatory framework that the Commission and other regulatory bodies will be asked to administer. The voluminous comments filed in the first round of this proceeding present compelling evidence of the lengths to which parties will go in order to craft rules that favor their own business models. Bill-and-keep eliminates key areas of dispute between carriers that exchange traffic with one another, helping to ensure that these service providers compete for customers instead of vying in the regulatory arena over the provisions of complex intercarrier compensation arrangements. The Commission should adopt reforms that move the entire industry toward a bill-and-keep model in the shortest time and the fewest steps, knowing that each exception or exemption carved out of a simple, unified system could become a point of contention or present opportunities for abuse.

12/ FNPRM at ¶ 33.

The FNPRM noted that some parties still adhere to a statement made in a 1996 Commission order, concluding at that time that bill-and-keep arrangements are not economically efficient so long as traffic is unbalanced and the costs of terminating traffic are positive. 13/ Some commenters continued to press that argument in the initial round of responses to the FNPRM. 14/ As USCC noted in its initial comments, however, the contention that this statement still holds true ignores evidence cited in the FNPRM and in the Staff Analysis attached as Appendix C to the FNPRM.

The Commission described in the FNPRM the dramatic changes that have occurred in the telecommunications marketplace since 1996, noting that consumers today manage their own telecommunications services to a far greater degree. 15/ Residential and business customers benefit from receiving calls as well as making them, and in fact pay for services that enhance their ability to manage incoming traffic. 16 Moreover, the explosive growth in wireless service and the resultant increase in competition indicate that traffic flows between carriers will

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13/ *Id.* at ¶ 38, n.112 (citing Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, *First Report and Order*, 11 FCC Rcd 15499, 16055, at ¶ 112 (1996)).

14/ *See, e.g.*, Comments of Indiana Office of Utility Consumer Counselor at 2; Comments of Montana Independent Communications Systems, *et al.* at 19.

15/ FNPRM at ¶ 17 (concluding that the flexibility end-users enjoy today in determining the types of communications they will receive undermines the "premise that the calling party is the sole cost causer and should be responsible for all the costs of a call").

16/ *Id.* at ¶¶ 25 – 26.

tend to become more balanced, as end-users begin to conceive of wireless and wireline services as ready substitutes for one another.

USCC recognizes the need for a smooth transition from the calling party's network pays ("CPNP") principles that underlie the intercarrier compensation regimes developed over the course of the past decade, but that transition should be as short and focused as possible on a speedy changeover to a more efficient and competitively neutral solution. Bill-and-keep provides that solution, and yet allows the Commission to fulfill its obligation to ensure affordable universal service – a priority shared by the rural wireless and wireline carriers that provide dynamic telecommunications services to millions of customers in rural America. 17/

III. ENSURING SERVICE IN RURAL AREAS DOES NOT MEAN IGNORING THE VALUE THAT WIRELESS SERVICES PROVIDE FOR RURAL CUSTOMERS.

As a leading rural wireless carrier serving more than 5.1 million customers in 25 states, USCC knows the value of services that wireless carriers provide to high-cost communities and the difficulties inherent in providing them. As USCC described in our initial comments, wireless networks are crucial to the economic development of rural America, but wireless carriers can only invest in providing superior services in high-cost areas if balanced and competitively neutral regulatory policies are in place.

17/ *See, e.g.*, Comments of CTIA at 10; Comments of National Cable & Telecommunications Association at 6; Comments of Qwest Communications International Inc. at 8.

For all of the reasons outlined above, USCC believes the best approach for developing a fair intercarrier compensation regime is bill-and-keep – and that the best bill-and-keep regime is a truly unified plan with no permanent exemptions for particular classes of carriers. Several commenters argue for exempting rural wireline carriers from an otherwise unified regime based on bill-and-keep principles, asserting that bill-and-keep would be detrimental to rural incumbent carriers and CLECs. 18/

The Commission should recognize that concern for the effects of intercarrier compensation reform on rural wireline carriers – or on rural *wireless* carriers, for that matter – are, of course, secondary to the effects that reform has on rural telecommunications *consumers*. USCC submits, however, that if the Commission decides to give special consideration to service providers in high-cost rural areas, the Commission should consider the special needs of all rural carriers – wireline and wireless alike – all of whom ultimately serve the same rural consumers.

Rural wireless carriers such as USCC have taken significant business risks to offer service in high-cost areas, and have faced the same cost-distribution issues as wireline carriers serving areas with low-density populations. In many rural areas, inter-modal competition – primarily due to the presence of wireless alternatives – presents consumers with the only real competitive choices they are likely to have. Furthermore, in many rural areas wireless is the most efficient

18/ *See, e.g.*, Comments of CCG Consulting, Inc. at 2; Comments of GVNW Consulting, Inc. at 9; Comments of Iowa Telecommunications Association at 4.

technological choice for providing service of any kind. Yet, some of the parties suggesting reforms to the intercarrier compensation regime seemingly go out of their way to inflict competitive harm on rural wireless carriers, by excluding them from the benefits accorded to rural wireline providers or to urban wireless providers. For instance, USCC noted in its initial comments that the ICF proposal suggested the creation of two new universal service mechanisms that would demand increased contributions from all wireless carriers while expressly denying many of the benefits of the new funds to the customers of rural wireless carriers. 19/

USCC never intends, in extolling the benefits of wireless service in rural areas, to minimize the importance of rural wireline service. Incumbent wireline carriers seem to forget, however, that wireless is an important rural service too, and one that rural customers demand. To ensure that rural Americans enjoy the same choices and opportunities that are available to residents of more densely populated areas, universal service support must be based on forward-looking costs, targeted to those who need it most, and set at levels no greater than necessary to assure affordable end-user rates. It must also be fully portable between carriers and across platforms, to make the benefits of full inter-modal competition available to consumers in high-cost areas. 20/

19/ *See* FNPRM at ¶ 43; *see also* Comments of the Intercarrier Compensation Forum at 32.

20/ *See, e.g.*, Comments of Western Wireless Corporation and SunCom Wireless, Inc. at 27.

IV. EXISTING CMRS POLICIES SHOULD BE MAINTAINED DURING THE TRANSITION PERIOD TO A UNIFIED BILL-AND-KEEP REGIME AND UNIVERSAL SERVICE SYSTEM.

In our initial comments, USCC made clear our support for maintaining the intraMTA rule during the transition period to a unified intercarrier compensation regime based on bill-and-keep principles. Replacing this sensible and successful rule with legacy wireline access charge requirements would jeopardize the unique benefits that consumers receive from their current wireless calling plans, such as larger calling areas, any-distance plans, and other innovative offerings. USCC noted in its comments that forcing wireless carriers to conform to LEC technological and geographic boundaries could create the kind of "rate shock" for rural wireless customers that the Commission seeks to avoid for all rural consumers.

As the tremendous growth in wireless subscribers over the last fifteen years demonstrates, a light regulatory touch that looks to market principles and economic efficiency for guidance is preferable to the imposition of legacy regulations on new technologies and evolving marketplaces. Some commenters still insist on arguing for the elimination or the reinterpretation of the intraMTA rule. 21/ Contrary to these parties' suggestions, the competitively and technologically neutral solution to a situation in which similar types of traffic are treated differently is not to squeeze all traffic into an inapposite legacy regulatory framework. The answer is for the Commission eventually to eliminate all such artificial barriers and distinctions by adopting a simple bill-and-keep regime.

21/ *See* Opening Comments of the California Small LECs at 5; Comments of John Starulakis, Inc. at 18; Comments of the United States Telecom Association at 48.

The intraMTA rule is another good example of a successful policy that is not broken and should not be "fixed" by imposing burdensome new intercarrier payment obligations on wireless carriers. The benefits that the rule allows wireless carriers to offer to their customers have in turn led to robust inter-modal competition and rapid wireless service penetration in rural markets. Large calling areas are only sensible for a product whose value proposition is based on mobility. Reducing the local calling area for calls placed by or made to wireless customers would impede the adoption of wireless service.

The Commission has time and again praised wireless service in its annual competition survey reports as one of the great success stories of the Telecommunications Act of 1996. Re-writing this success story and forcing a vibrant new technology into a burdensome, legacy access charge payment regulatory structure would defy common sense.

CONCLUSION

For the foregoing reasons, USCC again urges the Commission to act quickly and speed the transition to a unified, bill-and-keep intercarrier compensation regime. Bill-and-keep, with no revenue guarantees for any class of carriers, will promote economic efficiency and facilities-based competition with minimal regulatory intervention. The Commission can and should combine bill-and-keep intercarrier compensation principles with a portable, targeted, and truly consumer-focused universal service mechanism to both ensure affordable service and foster choice for customers in high-cost areas.

Respectfully submitted,

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